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76-5258

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 75-2349

TYREES COLOZA WHITEHEAD,

PETITIONER

V.

UNITED STATES OF AMERICA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT
FROM THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

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IN THE SUPREME COURT OF THE UNITED STATES

76-6258

TYREES COLOZA WHITEHEAD, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, Tyrees Coloza Whitehead, by counsel, petitions this Court for a Writ of Certiorari to the judgment of the United States Court of Appeals rendered on January 21, 1977.

OPINION BELOW

The opinion of the Court of Appeals is not yet reported. It is attached hereto as Appendix A.

JURISDICTION

The judgment of the Court of Appeals affirming the District Court was entered on January 21, 1977. Jurisdiction of this Court is invoked under 28 U.S.C. §1254.

QUESTION PRESENTED

Whether petitioner could legally be convicted of violations of 18 U.S.C. §2113(a) and (d) and 18 U.S.C. §924(c)(1) and (2) and be sentenced for separate offenses.

STATEMENT OF FACTS

Petitioner was indicted on four counts relating to an armed bank robbery with four others. He and three others were jointly tried by jury. He was convicted of violating 18 U.S.C. §2113(a) and (d) for which he received a twenty year sentence. He was convicted of violating 18 U.S.C. §924(c)(1) and (2) for which he received a five year consecutive sentence.

As to the issue raised herein the Government's evidence showed that three persons entered the Shaefer Street Branch of United Virginia Bank, Richmond, Virginia. Two weapons, a sawed-off shotgun and a snub nose pistol, were

displayed. The branch manager testified that he felt his life was in jeopardy.

REASON FOR GRANTING THE WRIT

The Fourth Circuit Court of Appeals relying on two of its recent opinions, United States v. Crew, 538 F. 2d 575 (1976) and United States v. Mathis, 538 F. 2d 326 (1976) rejected petitioner's argument and affirmed his conviction. (Opp. pg 16).

In the present case the two convictions upon which petitioner was sentenced were an 18 U.S.C. §2113(d) violation--bank robbery while putting a life into jeopardy by the use of a dangerous weapon and a 18 U.S.C. §924(c)(2) violation--the unlawful carrying of a firearm during the commission of the bank robbery felony. Petitioner argues, as did the unsuccessful defendant in Crew, serpia, that the §2113(d) conviction precludes a conviction and separate sentencing under §924(c)(2).

The basis of the argument is that the dual conviction and sentence violates the Fifth Amendment protecting against double jeopardy. As a principle of logic petitioner submits that there is no way a person may use a dangerous weapon in a bank robbery putting a person's life in jeopardy without carrying the weapon during the bank robbery. The objection is to the pyramiding of charges where a bank robbery with a firearm is involved.

The issue raised presents a significant question of Congressional intent in the enactment of 18 U.S.C. §924(c) and perhaps more importantly the question of double jeopardy in bank robbery prosecutions where a firearm is alleged to be used. While as yet no difference exists in Circuit Court opinions, the importance of the issue is perceived as one in which a substantial question is presented concerning the law of double jeopardy.

In order for the prosecution to establish a §2113(d) violation of use of the gun it must first show the carrying of the gun. Carrying is therefore a crucial element of the §2113(d) offense and cannot by logic or constitutional principle be made the basis of a separate punishable offense. The Fourth Circuit in Crew saw the validity of this argument in regard to that defendant's claim that he could not be dually sentenced for a §924(c)(1) use of the gun

and a §924(c)(2) carrying of the gun. If the use-carry argument of petitioner would prevail within §924 it should also prevail between §924(c)(2) and §2113(d).

CONCLUSION

For the reasons stated, it is respectfully requested that the Petition for Writ of Certiorari be granted.

TYREES COLOZA WHITEHEAD

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The Appendix has not been filmed. It appears at 549 F.2d 942.